SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 253

CARLOND HAMMOND — *Petitioner*

v.

STATE OF ARKANSAS
Ex Rel. JOHN DAVIS,
SHERIFF — *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT
and
APPENDIX

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PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

The petitioner prays that a writ of certiorari issue to review the judgment of the Arkansas Supreme Court denying a petition for writ of certiorari.

CITATION TO THE OPINION BELOW

The opinion of the Arkansas Supreme Court has been reproduced as Appendix A, infra, p. 11, and is reported at 244 Ark. 186.

JURISDICTION

The opinion of the Arkansas Supreme Court was delivered on February 26, 1968. A petition for rehearing

was timely filed, but was denied on May 1, 1968, by a per curium order and motion for stay of mandate pending this application for writ of certiorari was presented and granted by the Arkansas Supreme Court.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257 (3).

QUESTIONS PRESENTED

I

There was no evidence of probable cause as required by the Fourth Amendment to the Constitution of the United States.

II

The Governor of Arkansas arbitrarily reversed the decision of his predecessor using identical documents of demand, violating the due process clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISION INVOLVED

This case presents issues involving the Fourth Amendment and the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

The petitioner, Carlond Hammond, was arrested and detained as the result of a warrant and request for extradition issued by the Governor of the State of Louisiana to the Governor of the State of Arkansas on May 30, 1967.

During 1964, the petitioner was arrested in Arkansas on identical rendition documents and after a hearing before the Governor of the State of Arkansas (a different Governor), was ordered discharged.

The arrest during 1967 was based on identical documents in every respect except as to the date of authentication of the documents. A hearing was held before the Governor of Arkansas on August 2, 1967, and the petitioner was ordered to return to Louisiana on charges of theft.

There was no notice to the petitioner of any change nor was there any change in the documents requesting rendition.

The petitioner filed for writ of habeas corpus challenging the arrest and detention. The trial court denied the petition and held that a form affidavit of arrest substantially charged an offense as required by the laws of Arkansas and the United States Constitution.

The petitioner requested a writ of certiorari to the Arkansas Supreme Court. The Court did not consider the fact that there were two separate proceedings for

extradition, but erroneously concluded that there was a delay in the proceedings from 1964 to 1967.

The Court did not make a finding nor direct that there be a finding of probable cause before a warrant could be executed. The petition was denied.

The error of the Arkansas Supreme Court was pointed out on a petition for rehearing. The rehearing was denied without comment. The mandate of the Arkansas Supreme Court has been stayed pending this application for certiorari.

REASONS FOR GRANTING THE WRIT

I

There was no evidence of probable cause as required by the Fourth Amendment to the Constitution of the United States.

The Petitioner raised the question of probable cause at the Trial Court Level. That Court ruled that the form affidavit, the basis of the warrant, was sufficient to meet the requirements of Arkansas law regarding extradition.[1] The issue of probable cause was again raised with the Arkansas Supreme Court. The Arkansas Supreme Court did not meet this issue and state that sufficient facts were present to justify a Fourth Amendment finding or probable cause. Rather the Court stated the lower Court was "justified" in its decision because the affiant had some knowledge of Petitioner's participation in a "scheme to deprive the affiant of his money".[2] It was decided in *Kirkland* v. *Preston,* 385 F. 2d 670, that there must be a finding of probable cause as required by the Fourth Amendment to the Constitution of the United States before a warrant can be the basis of extradition. In the *Kirkland case,* the Court held that a form affidavit reciting merely the statutory elements of a crime did not "charge" a crime and, therefore, unsupported did not justify a finding of probable cause.

Certiorari should be granted to examine the failure of the lower Courts to make a finding of probable cause as required by the Fourth Amendment to the United States Constitution.

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[1] R. 15-16

[2] 244 Ark. at 189

II

The Governor of Arkansas arbitrarily reversed the decision of his predecessor using identical documents of demand, violating the due process clause of the Fourteenth Amendment.

This case involves the unique situation of one Governor reversing an extradition decision of his predecessor using identical documents. The Petitioner carefully made a record that will reflect the following sequence of events:

In 1964, the Governor of Arkansas was presented with documents from the State of Louisiana requesting extradition of the Petitioner on a charge of theft. A hearing was held and the Petitioner was discharged by the Governor because of insufficient evidence.

In May of 1967, identical documents were sent from the Governor of Louisiana to the Governor of Arkansas seeking extradition of the Petitioner. This Governor of Arkansas in 1967 was the successor to the Governor who had denied extradition. There was no attempt made to add to the documents nor was the Petitioner notified of any change in circumstances or additional evidence. The "new documents" were updated, that is, the forwarding dates read "1967" rather than "1964". In all other respects, the documents were exactly the same, word for word, as the document of 1964. The affidavits and the warrant were unchanged.

The Arkansas Supreme Court erroneously concluded that this was all one process of extradition, covering a period of three years and was not two separate proceed-

ings. Clearly this error affects the contention of Petitioner for due process.

The duty of any judge or quasi-judicial official is clearly set forth in *Wanner* v. *Levy,* 268 U.S. 390. In this case, the Court considered the question of res judicata of hearings before a United States Commissioner. The Court held that jeopardy was not involved, however, stated that:

> "Care should be exercised by the Magistrate to whom a subsequent application for removal is made to see that the accused is not oppressed by repeated and unwarranted petitions for removal."[3]

Certainly extradition is a matter of discretion. However, this discretion is not absolute and when all rules of due process are ignored, oppression results.

The Arkansas Supreme Court clearly erred by considering these two separate hearings as one hearing. The record will clearly reflect that there were two hearings based on identical documents resulting in two different decisions. The Petitioner was not notified of any change in circumstances nor was any attempt made to amend the documents. The due process clause of the Fourteenth Amendment to the United States Constitution clearly requires Governors to give lip service to the fundamental rights of individuals who are in custody seeking a forum which will render a fair and lawful decision.

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[3] 268 U.S. at 394

CONCLUSION

It is respectfully urged that petitioner has revealed several instances in the record of his hearings and in the decision of the Arkansas Supreme Court that are contrary to the decisions of this Court and the concepts of justice. Certiorari should be granted in order that the errors committed in the Court below may be fully developed and the petitioner's detention reviewed.

Respectfully submitted,

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APPENDIX A

SUPREME COURT OF ARKANSAS

No. 5311

Carlond Hammond,
Petitioner

Opinion Delivered
February 26, 1968.

v.

Petition for Writ of Certiorari from White County Circuit Court

State of Arkansas,
Respondent.

Petition denied.

PAUL WARD, Associate Justice

Paul Ward, J. This is a review of a refusal by the Circuit Court of White County to grant Carlond Hammond (Petitioner) a Writ of Habeas Corpus whereby he sought to evade extradition to the State of Louisiana. A brief statement of facts from which stems this litigation is set out below.

On May 30, 1967 the Governor of Louisiana signed requisition papers directed to the Governor of Arkansas asking for the return of Petitioner who was charged in 1964 with the crime of stealing $25,000 in Louisiana. On August 2, 1967 a hearing was held on the matter in the office of the Governor of Arkansas, and one week later the Governor of Arkansas issued a warrant to have Petitioner arrested by the sheriff of White County and placed in jail. Thereupon Petitioner applied for a Writ of Habeas Corpus in the Circuit Court of said county to obtain his freedom. A hearing was had, and on Septem-

ber 6, 1967 the trial judge denied the petition and remanded Petitioner to the custody of the sheriff of White County.

On September 22, 1967 Petitioner filed this Petition for a Writ of Certiorari, and now urges three grounds for a reversal of the trial court.

One. It is first contended "the Governor of Arkansas improperly delegated all responsibility for determining the validity of the extradition papers."

We find no merit in this contention which is based on the fact that Bob Scott (an agent or employee of the Governor) examined the requisition papers and found them adequate before the Governor signed the warrant of arrest.

Ark. Stat. Ann. §43-3002 (Repl. 1964) provides that it is the duty of the Governor to have arrested and delivered to another state any person charged in that state with a felony who has fled from justice. Section 43-3004 provides that the Governor may call upon the Attorney General to investigate or assist in investigating the "demand" and report to him. Section 43-3007 provides that if the Governor decides the "demand" should be complied with, "he shall sign a warrant of arrest . . . . "

We find nothing in the above statute which forces a conclusion that the Governor *must* personally make the investigation or have it made by the Attorney General. It must be recognized that a governor has the right to rely on his agents or employees to make investigations and report their findings, and to rely thereon. This is consistent with his *right* to call on the Attorney General for assistance and advice if he deems it necessary. Ob-

viously the legality of the Governor's action in signing the warrant of arrest in this case is not dependent on the source of the information upon which he acted.

Two. It is next argued that "The documents of 'demand' do not show probable cause . . . . "

Demand documents refer here to certain documents executed in Louisiana setting out the facts relative to the accusations against Petitioner. It is necessary therefore to set out below a brief summary of these documents.

> (a) Morris Lucia who is a resident of Louisiana, in an affidavit sworn to before a District Judge of said state, stated, in essence: On May 13, 1964 Joe Fassulo, whom I knew, introduced me to Carlond Hammond (Petitioner) who told me he knew a "person" who had $200,000 in bills of large denominations and desired to exchange them (at a 40% discount) for bills of smaller denominations; Petitioner stated the deal was legitimate since the "person" had previously been in trouble with the revenue agents and feared circulation of the large bills might renew the trouble; a week later I was informed by Joe that Petitioner had arranged for me to meet the "person" at a hotel in Opelousas to effect an exchange of bills; Joe and I went to the hotel where I was told the "person" would not negotiate personally with me; Therefore, I gave Joe $25,000 to deliver to the "person"; About twenty minutes later Joe returned and said Petitioned took the money and "disappeared into the night". (On the same day affiant proceeded to have Petitioner charged with theft.)
>
> (b) On June 16, 1964 the Governor of Louisiana issued a signed document stating that he was informed Petitioner had taken refuge in Arkansas; that he had made application to the Governor of Arkansas for the surrender of Petitioner, and had

appointed an Agent to take Petitioner in custody. (All the above mentioned documents were forwarded to the Governor of Arkansas.)

For reasons, not made entirely clear in the record, the extradition proceedings were delayed until May 30, 1967 when the Governor of Louisiana made another application to the Governor of Arkansas, based on the documents previously mentioned.

Based on the above documents, it is our opinion that the trial court was correct, and that the extradition of Petitioner was justified and legal. Conceding that Lucia did not actually see Petitioner take his money, he did know and swear that Petitioner was an active participant in the scheme to deprive him of his money. This fact would make Petitioner a participant in the crime charged. Ark. Stat. Ann. §43-3002 (Repl. 1964), in part reads:

> " . . . it is the duty of the Governor of this state to have arrested and delivered up to the Executive Authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state."

The pertinent Louisiana Law is clear. L. S. A. §14:23 reads:

> "The parties to crimes are classified as (1) Principals and (2) Accessories after the fact."

L. S. A. §14:24 reads:

> "All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals."

Three. Again we are unable to agree with the contention that this proceeding violates due process under the doctrine of res judicata. Petitioner here relies on the alleged fact that previously an attempt was made to have him extradited but failed because of a lack of sufficient evidence.

Conceding the above allegation to be true it would not, in our opinion constitute res judicata. Black's Law Dictionary defines "Res judicata" as: "A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." In Am. Jur. (Extradition) §57, there appears this statement:

> "Where a first application for extradition is refused on the ground that the evidence presented is insufficient, it leaves the proceeding in the same condition as in other cases of preliminary examination, and there may be a second inquiry. The release of a person on the ground of informality or mistake in the proceedings is not a bar to a subsequent arrest on perfected papers or legal proceedings."

The case of *Letwick* v. *State,* 211 Ark. 1, 198 S.W. 2d 830, dealt with this issue on facts similar to those of this case, and the Court said:

> "There is no question of former jeopardy in this case. Indeed the question is whether appellant shall be returned for a trial to the state where the offense is alleged to have been committed."

The Petition is denied.